APPENDIX

Social Security Act, c. 531, 49 Stat. 620:

TITLE VIII—TAXES WITH RESPECT TO EMPLOYMENT.

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SEC. 811. When used in this title—

* * * * *

(b) The term "employment" means any service of whatever nature, performed within the United States by an employee for his employer, except—

* * * * *

(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(42 U. S. C. 1011.)

TITLE IX—TAX ON EMPLOYEES OF EIGHT OR MORE.

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SEC. 907. When used in this title—

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(c) The term "employment" means any service, of whatever nature, performed within the United States by an employee for his employer, except—

* * * * *

(7) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

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(42 U. S. C. 1107.)

These are the same as Sections 1426 (b) (8) and 1607 (c) (7) of the Internal Revenue Code as originally approved on February 10, 1939.

Social Security Act Amendments of 1939, c. 666, 53 Stat. 1360:

SEC. 606. Effective January 1, 1940, section 1426 of the Internal Revenue Code is amended to read as follows:

"SEC. 1426. DEFINITIONS.

"When used in this subchapter—

* * * * *

"(b) *Employment.*—The term 'employment' means any service performed prior to January 1, 1940, which was employment as defined in this section prior to such date, and any service, of whatever nature, performed after December 31, 1939, by an employee for the person employing him, irrespective of the citizenship or residence of either, * * * except—

* * * * *

"(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the

prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;"
(26 U. S. C. 1426.)

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SEC. 614. Effective January 1, 1940, section 1607 of the Internal Revenue Code is amended to read as follows:
"SEC. 1607. DEFINITIONS.
"When used in this subchapter—

* * * * *

"(c) *Employment.*—The term 'employment' means any service performed prior to January 1, 1940, which was employment as defined in this section prior to such date, and any service, of whatever nature, performed after December 31, 1939, * * * except—

* * * * *

"(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;"
(26 U. S. C. 1607.)

Treasury Regulations 91, promulgated under Title VIII of the Social Security Act (effective through December 31, 1939):

ART. 12. *Religious, charitable, scientific, literary, and educational organizations and community chests.*—Services performed by any employee of an organization of the class specified in section 811 (b) (8) are excepted.

For the purpose of the exception the nature of the service is immaterial; the statutory test is the character of the organization for which the service is performed.

In all cases, in order to establish its status under the statutory classification, the organization must meet two tests:

(1) It must be organized and operated exclusively for one or more of the specified purposes; and

(2) Its net income must not inure in whole or in part to the benefit of private shareholders or individuals.

Corporations or other institutions organized and operated exclusively for charitable purposes comprise, in general, organizations for the relief of the poor. The fact that an organization established for the relief of indigent persons may receive voluntary contributions from the persons intended to be relieved will not necessarily affect its status under the law.

* * * * *

Since a corporation or other institution to be within the prescribed class must be organized and operated exclusively for one or more of the specified purposes, an organization which has certain religious purposes and also manufactures and sells articles to the public for profit is not within the statutory class even though its property is held in common and its profits do not inure to the benefit of individual members of the organization.

An organization otherwise within the statutory class does not lose its status as such by receiving income such as rent, dividends and interest from investments, provided such income is devoted exclusively to one or more of the purposes specified in section 811 (b) (8) of the Act.

Money contributed by members of an organization to a common fund to be applied to the relief of the particular members of the organization or their families when in sickness, unemployed, in want, or under other disability, is not a charitable fund.

* * * * *

Article 206 (7) of Treasury Regulations 90, promulgated under Title IX of the Social Security Act (effective through December 31, 1939), is the same as Article 12 of Treasury Regulations 91.

Treasury Regulations 106, promulgated under the Federal Insurance Contributions Act (effective after January 1, 1940):

SEC. 402.215. *Religious, charitable, scientific, literary, and educational organizations and community chests.*—Services performed by an employee in the employ of an organization of the class specified in section 1426 (b) (8) of the Act are excepted.

For purposes of this exception the nature of the services performed is immaterial; the statutory test is the character of the organization for which the services are performed.

In all cases, in order to establish its status under the statutory classification, the organization must meet the following three tests:

(1) It must be organized and operated exclusively for one or more of the specified purposes;

(2) Its net income must not inure in whole or in part to the benefit of private shareholders or individuals; and

(3) It must not by any substantial part of its activities attempt to influence legislation by propaganda or otherwise.

Corporations or other institutions organized and operated exclusively for charitable purposes comprise, in general, organizations for the relief of the poor. The fact that an organization established for the relief of indigent persons may receive voluntary contributions from the persons intended to be relieved will not necessarily affect its status under the law.

* * * * *

Since a corporation or other institution to be within the prescribed class must be organized and operated exclusively for one or more of the specified purposes, an organization which has certain religious purposes and which also manufactures and sells articles to the public for profit is not within the statutory class even though its property is held in common and its profits do not inure to the benefit of individual members of the organization.

An organization otherwise within the statutory class does not lose its status as such by receiving income such as rent, dividends, and interest from investments, provided such income is devoted exclusively to one or more of the specified purposes.

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Section 403.215 of Treasury Regulations 107, promulgated under the Federal Unemployment Tax Act (effective after January 1, 1940) is substantially the same as Section 402.215 of Treasury Regulations 106.

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